USTELECOM
THE BROADBAND ASSOCIATION

July 25, 2019

Ex Parte
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Promoting Telehealth in Rural America, WC Docket No. 17-310

Dear Ms. Dortch:

USTelecom writes to express its members' views on the draft Report and Order (R&O) in the above-referenced docket.[1] USTelecom is supportive of the Commission's efforts to improve access to healthcare in rural America via telehealth services. We applaud the Commission making long-overdue reforms to its Rural Health Care (RHC) Telecom Program (Telecom Program), but we have concerns about some specific items in the draft rules as decribed below.

As an initial matter, the draft R&O would adopt rate ceilings for the "rural rate" eligible for support under the RHC Telecom Program and for this purpose instructs the Universal Service Administrative Company (USAC) to calculate a median rural rate based on "available rates for the same or similar services offered within the healthcare provider's rural tier" in the same state.[2] USTelecom members do not disagree with this concept in general, however we see a few significant potential problems with the way the item proposes to implement this. USTelecom suggests the Commission provide additional rate flexibility by permitting service providers to charge a higher "rural rate" than USAC's median, without following the proposed waiver process,[3] in the following limited circumstances: (a) the service provider's rate comes from a master state agreement, which went through a competitive bidding process; (b) the service provider's rate is contained in a tariff or publicly available service guide/guidebook *and* the service provider has a retail customer that is not supported by the Commission's RHC or Schools

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[1] *In the Matter of Promoting Telehealth in Rural America,* Report and Order, WC Docket No. 17-310, FCC-CIR 1908-03 (*Draft Telehealth R&O).*
[2] *See id.* at paras 57-61.
[3] *See id*. at paras 65-72.

and Libraries (E-rate) mechanism purchasing the same or similar service out of the tariff or service guide/guidebook at the same undiscounted rate as the Telecom Program participant; or (c) the service provider's rate is the same as or lower than a rate the service provider is charging to a retail customer that is not supported by the Commission's RHC or E-rate mechanism for the same or similar service. The Commission is rightfully concerned that some Telecom Program participants are being charged rates that no other retail customer would pay absent a large Telecom Program discount. However, that concern does not exist under the three limited exceptions listed above. Under all three exceptions, the marketplace is functioning and the service provider's "rural rate" charged to the Telecom Program participant is the same or less than what a retail customer that is not a universal service beneficiary pays.

In addition, USTelecom also seeks clarity with respect to how USAC will address different contract terms, volume discounts, and different feature sets in calculating the median rate for a service as is described in the draft R&O.[4] USTelecom supports USAC accounting for these elements in establishing median rates. However, if USAC is unable to create different medians based on contract term, for example, then the Commission should direct it to use only month-to-month rates when establishing a median rate for a service. As the Commission understands, many service providers do not respond to health care providers' FCC Form 465 postings. Indeed, many service providers are the existing provider to that healthcare provider and are "selected" on that basis. USTelecom's members have Telecom Program participants obtaining service on a month-to-month basis despite the service provider's efforts to move these customers to 1+ year contracts, which most likely would result in lower prices to the customer. These service providers should not be penalized because of their customer's refusal to sign a contract, which would be the result if USAC were to set a median rate without regard to the contract term.

In the draft R&O the Commission delegates to USAC the task of determining what is a "similar service" for purposes of calculating rural and urban rates in the Telecom Program.[5] USTelecom has several concerns with the Commission's proposed instructions to USAC. First, the Commission directs USAC *not* to limit its rate review to rates for telecommunications services.[6] Instead, USAC is instructed to obtain rates for information services and services offered on a private carriage basis, and to use such rate information in calculating median rural and urban rates in the Telecom Program. As the Commission acknowledges, it does not allow either type of service to receive funding under the Telecom Program.[7] Consequently,

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[4] *See Draft Telehealth R&O* at paras 73-79.
[5] *See Draft Telehealth R&O* at paras 14-20.
[6] *Id.* at para. 18.
[7] *Id.*

USTelecom believes it is inappropriate to calculate median rates for "telecommunications services" using rates for non-telecommunications services. Moreover, the Commission never sought comment on incorporating rates for ineligible services into the Telecom Program's rural and urban rate calculations.[8] To address these issues, USTelecom recommends that the Commission delete paragraphs 18-20 of the draft R&O.

Second, the Commission also proposes to consider services with advertised speeds of 30% above and below the requested service to be deemed functionally similar for rural and urban rate calculation purposes.[9] USTelecom's members have significant pricing experience and, except in Alaska, we disagree that such a wide range of speeds are "functionally similar" for pricing purposes. Instead, we urge the Commisison to adopt NCTA's proposal to use a narrower range, between 10-15% of the requested service. Because Alaska is a substantially smaller market, with correspondingly fewer customers, contracts, and rates, USTelecom acknowledges the benefits of using a wider range of bandwidths in that state to generate a more robust set of rates for similar services. Therefore, USTelecom supports use of the 30% range proposed in the draft R&O to generate the set of rates used to establish median rates in Alaska.

In the draft R&O the Commission also seeks to improve potential wasteful inefficiency in the competitive bidding process by implementing several safeguards.[10] USTelecom supports these good government initiatives and believes that the Commission should go even further by requiring applicants to identify the existing service currently discounted through the Telecom Program and the desired service with bandwidth, if different. USTelecom is concerned that, without this simple addition, consultants will attempt to satisfy the Commission's proposed requirement to list the requested service with bandwidth using overly broad ranges. Additionally, it is USTelcom members' experience that many Telecom Program beneficiaries or their consultants will post a FCC Form 465 even though there is an existing contract in place for the requested funding year. These postings cause service providers to waste time analyzing and preparing bids when there is no real opportunity. To allow service providers to quickly identify such FCC Forms 465, USTelecom recommends the Commission add a checkbox that the healthcare provider or its consultant would check if an existing contract is in place for the requested funding year.

USTelecom also supports the Commission's goal of harmonizing both of its RHC Programs by addressing the requirements regarding the use of consultants,[11] and streamlining

[8] *See* Administrative Procedures Act, 5 U.S. Code Section 553.
[9] *See Draft Telehealth R&O* at paras 15-16.
[10] *See Draft Telehealth R&O* at paras 142-43.
[11] *See Draft Telehealth R&O* at paras160.

forms and data collection.[12] However, USTelecom has conerns about the following draft rules: §§54.627(d)(3)(ii)(H) and (e)(ii)(G) and §§54.627(d)(3)(ii)(F) and (e)(ii)(E). Draft rules §§54.627(d)(3)(ii)(H) and (e)(ii)(G) prohibit service providers from utilizing consultants or third parties to help sell to health care providers if those health care providers ultimately decide to participate in the Commission's RHC Programs. To be sure, USTelecom supports prohibiting *applicants* from using consultants or third parties that have any relationship with service providers as proposed in §54.623(a)(1)(x). However, prohibiting service providers from using third parties to sell to health care providers is both unnecessary and would be disruptive to the industry as it is commonplace for service providers to use solution providers to sell to small and medium-sized business, including health care providers. Similarly, proposed rules §§54. 54.627(d)(3)(ii)(F) and (e)(ii)(E) would require service providers to certify under penalty of perjury that the invoiced services are "eligible" for RHC support.[13] It is not the service provider's responsibility to determine the eligibility of these services. Rather, such a determination must be made by the applicant and USAC. Furthermore, USTelecom is concerned that this rule as written would prevent service providers from issuing bills to RHC program participants that contain non-RHC-discounted services. Billing customers for all services rendered on a single bill is the norm for carriers and is something that customers desire. To avoid any unintended consequences and for the reasons described above, USTelecom asks that the Commission delete these proposed rules prior to adoption.

Finally, with respect to the adoption of rate ceilings for the state of Alaska, USTelecom agrees with its member Alaska Communications that basing the rate setting mechanism as described in the draft R&O creates a false median rate for Alaska due to the fact that all but a small number of locations served by Alaska's rural healthcare providers would be grouped in the "Extremely Rural" tier with a single median rate for all, regardless of whether the location is on-road, off-road or served only by satellite.[14] Due to the low population density and difficult terrain and weather conditions in the state, this methodology would effectively cut off all of the highest cost Alaska locations from service supported by the RHC program, and severely impair the public interest by de-funding telehealth services for the neediest rural Alaskans. Assuming this unfair result cannot be the intent the Commission, USTelecom supports the alternate solutions Alaska Communications describes in its recent ex partes in this docket[15] for purposes of applying these rules in the state of Alaska.

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[12] *See Draft Telehealth R&O* at para 195.
[13] *See also id.* at para. 195.
[14] *See* Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (Jul. 19, 2019).
[15] *See id.*; Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (Jul. 24, 2019) (proposing a two-tiered system within the "extremely rural" zone that

Please contact the undersigned should you have any questions.

Respectfully submitted,

USTELECOM

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would distinguish between "on-road" and "off-road" locations, either directly using road maps of the state, or based on the "rural" and "frontier" classifications established by Alaska's Center for Rural Health and Health Workforce).